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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. *2011-848*

12 **KENNETH WAYNE BAILEY JR.**
13 **46411 Phillippsville Road**
Bay Minette, AL 36507
14 **Registered Nurse License No. 596466**

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about March 21, 2002, the Board of Registered Nursing issued Registered
23 Nurse License Number 596466 to Kenneth Wayne Bailey Jr. (Respondent). The Registered
24 Nurse License expired on October 31, 2009, and has not been renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
2 that the Board may discipline any licensee, including a licensee holding a temporary or an
3 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
4 Nursing Practice Act.

5 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
7 licensee or to render a decision imposing discipline on the license. Under Code section 2811,
8 subdivision (b), the Board may renew an expired license at any time within eight years after the
9 expiration.

10 6. Section 118, subdivision (b), of the Code provides, in pertinent part, that the
11 expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
12 action during the period within which the license may be renewed, restored, reissued or
13 reinstated.

14 STATUTORY PROVISIONS

15 7. Section 2761 of the Code states:

16 “The board may take disciplinary action against a certified or licensed nurse or deny an
17 application for a certificate or license for any of the following:

18 “(a) Unprofessional conduct, which includes, but is not limited to, the following:

19 ...

20 “(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action
21 against a health care professional license or certificate by another state or territory of the United
22 States, by any other government agency, or by another California health care professional
23 licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that
24 action.”

25 COST RECOVERY

26 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations of
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1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct – Out of State Discipline)

5 (Bus. & Prof. Code § 2761, subd. (a)(4))

6 9. Respondent has subjected his registered nurse license to disciplinary action under
7 Code section 2761, subdivision (a)(4), in that on or about September 16, 2005, in a disciplinary
8 action before the Alabama Board of Nursing (Alabama Board), the Alabama Board entered a
9 Consent Order publicly reprimanding Respondent. The Consent Order also required Respondent
10 to pay a fine and provide all health care employers, collaborative and covering physicians, and
11 schools of nursing with a copy of the Order.

12 10. The underlying conduct supporting the Alabama Board's disciplinary order is that on
13 or about November 30, 2004, Respondent completed an online application for reinstatement of
14 his registered nurse license. On his application, Respondent failed to acknowledge a pending
15 June 22, 2004 arrest in California. Furthermore, on or about December 8, 2004, Respondent pled
16 nolo contendere to solicitation to engage in the act of prostitution. Respondent was fined and
17 sentenced to 10 days in jail and 54 hours under the Alternative Sentencing Program.

18 SECOND CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct – Out of State Discipline)

20 (Bus. & Prof. Code § 2761, subd. (a)(4))

21 11. Complainant realleges the allegations contained in paragraphs 9 and 10 above, and
22 incorporates them as if fully set forth.

23 12. Respondent has subjected his registered nurse license to disciplinary action under
24 Code section 2761, subdivision (a)(4), in that on or about July 17, 2009, the Alabama Board
25 entered a Consent Order suspending Respondent's Alabama registered nurse license for a
26 minimum of 3 months. Respondent's license would be reinstated and placed on probation for 24
27 months once the Alabama Board received satisfactory documentation showing that Respondent:
28 (1) paid the fine set forth in the Consent Order; (2) successfully completed the educational
programs specified in the Consent Order; (3) accrued the requisite continuing education credits;

1 and (4) paid the appropriate fees. Once reinstated, the terms and conditions of Respondent's
2 probation required Respondent to: (1) return his wallet ID to the Alabama Board; (2) complete
3 Board-approved courses or programs on professional accountability, critical thinking, and cardiac
4 emergencies; (3) submit written status reports to the Board on a monthly basis containing a self-
5 assessment of his current status; (4) not work for a nursing registry, travelling nurse agency,
6 nursing float pool, hospice, home health agency, or temporary employment agency; (5) not be
7 employed as a supervising nurse; (6) practice only under the on-site monitoring of a Board-
8 approved licensed health professional in good standing with their professional regulatory body;
9 (7) work only on regularly assigned, identified, and pre-determined units; (8) provide all health
10 care employers, collaborative and covering physicians, and schools of nursing with a copy of the
11 Consent Order; (9) cause his employer to submit quarterly written evaluations to the Alabama
12 Board regarding Respondent's nursing performance; (10) not accept or change employment
13 without prior written notification to the Alabama Board; (11) maintain a current license at all
14 times during the period of probation; (12) if arrested by law enforcement or admitted to any
15 institution for the treatment of abuse or dependence on any chemical substance, or for treatment
16 of any emotional or psychological disorder, notify the Alabama Board immediately; (13)
17 immediately notify the Alabama Board of any change in address; (14) notify the Alabama Board
18 of any pending relocation outside of the State of Alabama; (15) if monitored by another state,
19 successfully complete all requirements of the Board Order of the other jurisdiction in order to
20 fulfill the terms of the Alabama Board's Consent Order; (16) appear in person for interviews at
21 the request of the Alabama Board; (17) obey all laws; and (18) authorize the Alabama Board to
22 submit information and all necessary records to ensure compliance with the Consent Order and
23 public safety.

24 13. The underlying conduct supporting the Alabama Board's disciplinary action is that
25 from on or about January 21, 2008, through August 15, 2008, Respondent was employed as a
26 registered nurse at Mobile Infirmity Medical Center in Mobile, Alabama. On or about June 24,
27 2008, Respondent signed an "HIS Employee Corrective Action Report" (Report) due to his
28 unsatisfactory job performance and behavior. According to the Report, on or about June 21,

1 2008, and June 22, 2008, Respondent's patients complained that Respondent was rude, failed to
2 respond to their requests, and neglected their care needs. Respondent received a written warning
3 from his employer regarding this conduct.

4 14. On or about August 11 and 12, 2008, Respondent was assigned to care for Mobile
5 Infirmary Medical Center 4 West patient HHR. At 1:05 a.m., the unit secretary received a phone
6 call from a monitor technician stating that patient HHR was displaying ventricular fibrillation on
7 the monitor. Ventricular fibrillation is a severely abnormal heart rhythm (arrhythmia) that can be
8 life-threatening. The unit secretary believed that she heard the monitor technician report that
9 patient HHR "was in d fib," and the secretary communicated this to Respondent. Respondent
10 stated that he had never heard of such a thing, and he did not evaluate the patient nor did he call
11 the monitor room for clarification. At 1:06 a.m., the unit secretary received a second call from
12 the monitor room again stating that patient HHR was in ventricular fibrillation. This information
13 was relayed to Respondent who failed to go to HHR's room at the time. At approximately 1:13
14 a.m., another registered nurse on duty received a phone call from the monitor room stating that
15 patient HHR was in ventricular fibrillation. As that call ended, Respondent initiated a staff call
16 from patient HHR's room requesting assistance and calling a code. Codes are used in hospitals to
17 alert staff to various emergency situations. At 1:14 a.m., Code Blue was initiated. Code Blue is
18 generally used to indicate that a patient requires immediate resuscitation, most often as the result
19 of a cardiac arrest. At approximately 1:17 a.m., patient HHR's rhythm was asystole. Asystole is
20 a state of no cardiac electrical activity, and therefore no contractions of the myocardium and no
21 cardiac output or blood flow. At approximately 1:27 a.m., patient HHR expired.

22 15. After the incident, Respondent stated that he was on his way to check on patient
23 HHR following the monitor room's 1:06 a.m. phone call, when he heard the phone ring again.
24 Respondent stated that this subsequent phone call was the third time telemetry called to say that
25 patient HHR was in "V-Fib." A telemetry nurse is a healthcare professional who reads
26 electrocardiogram equipment, also known as heart monitors. Respondent stated that he entered
27 HHR's room between 1:07 a.m. and 1:13 a.m. When he arrived, he checked for radial and carotid
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1 pulse and determined that the patient was non-responsive. He called for assistance and moved
2 equipment while waiting for assistance to arrive.

3 16. On or about August 12, 2008, Respondent met with his manager to discuss the
4 August 11, 2008 incident. Due to the incident, Respondent was not allowed to work his
5 scheduled shift on August 12, 2008, and he was asked not to return to work until contacted by his
6 employer. On or about August 15, 2008, Respondent was contacted by his manager who
7 informed Respondent that his employer had completed a follow-up investigation of Respondent's
8 failure to respond to patient HHR's life-threatening arrhythmia on or about August 11, 2008, and
9 Respondent's employment was discontinued effective August 15, 2008.

10 17. The Alabama Board concluded that Respondent failed to comply with the Alabama
11 Nurse Practice Act and rules and regulations when he received a written warning in June 2008
12 due to unsatisfactory job performance and behavior, and when he failed to evaluate and initiate
13 emergency measures in a timely manner following notification of a change in patient HHR's
14 cardiac rhythm in August 2008. The Alabama Board further concluded that Respondent's
15 conduct was unprofessional and of a character likely to deceive, defraud, or injure the public in
16 matters pertaining to public health.

17 PRAYER

18 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
19 Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

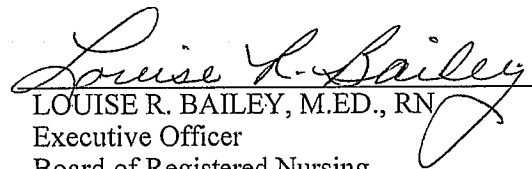
20 1. Revoking or suspending Registered Nurse License Number 596466, issued to
21 Kenneth Wayne Bailey Jr.;

22 2. Ordering Kenneth Wayne Bailey Jr. to pay the Board of Registered Nursing the
23 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
24 Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: April 14, 2011


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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